because Section 3220 provides that when process is directed to an officer, it may be executed by any other officer to whom it might lawfully have been directed, and as we have seen above it can lawfully be directed only to the sheriff of the City of Richmond. It follows therefore that process in such cases can not be executed by any officer but that there must be an order of publication under Section 3225. Such a state of affairs does not apply to public service corporations, or suits on certain bonds, or suits for damages for a wrong, or where there are two or more defendants on one of whom process has been executed in the county or corporation in which the suit was brought; but all other cases are governed by this most arbitrary and unreasonable rule. There can be no good reason why there should be an order of publication against a domestic corporation when personal service can be had. The revisors of 1849 eliminated from § 3220 this strange provision, but the General Assembly put it back. Mr. Lile in his Notes on Corporations has a very perspicuous analysis of the last-mentioned section, and in 2 Va. Law Reg. 545 will be found a note comparing publication thereunder with those had under § 3230.

Bankruptcy — Trustee — Title to Legacy.—A legacy vesting in a bankrupt upon the date of adjudication but prior to the filing of his petition passes to his trustee. In re McKenna, 15 Am. B. R. 4.

Bankruptcy—Lien—Transfer of Dower as Consideration for Deed of Trust.—Where more than four months prior to adjudication, the bankrupt, in furtherance of repeated promises to secure his wife for money borrowed from time to time, executed a deed of trust upon a certain farm to secure payment of his debt to her in consideration of her joining in another deed of trust on the same day, by which she surrendered her contingent right of dower in and to his farm to the extent of $12,500 of its value, and it is not shown whether such dower right would be less, equal or more than the value of the preference given in consideration of its surrender, the deed of trust to her will be sustained to the amount secured to her. In re Porterfield, 15 Am. B. R. 11.

Bankruptcy—Jurisdiction—Stay of Execution Sale.—A sale of a bankrupt's real estate under an execution issued upon a judgment recovered against him more than four months anterior to his adjudication, may be stayed in the discretion of the bankruptcy court. In re Baughman, 15 Am. B. R. 23.

Insane Person—Appointment of Committee—Notice—Sec. 1697, Va. Code 1904.—In Karnes *v.* Johnston, 52 S. E. 658, the Supreme Court of Appeals of West Virginia delivered an opinion which is very im-

portant to the profession in Virginia, in that it considers the necessity of notice to the insane person in proceedings to appoint a committee for him. The court held: "The appointment by a county court of a committee for a person as insane, upon the finding of justice that such person is insane under the inquisition § 9, ch. 58, Code 1899 (W. Va.), without notice to such person, is void."

In discussing this question, the court said: "It is argued that as section 33 authorizes a county court to appoint when a justice has found one insane, without providing for notice, and as section 34 provides that a county court may appoint when one is suspected of being insane, and in words requires notice, therefore no notice is required in this case, because the justice has found the person to be insane. If we give section 33 effect to warrant such appointment without notice, it would be unconstitutional, because it would deprive a person, without due process of law, of the dearest rights, personal freedom, which is "liberty," and the possession, perhaps during life, of his property. We should not give section 33 a construction rendering it unconstitutional; but we should adopt such a process under it as would not render it obnoxious to the Constitution. In some instances a statute will be, or will not be, unconstitutional dependent on a procedure under it. An instance is King *v.* Mullins, 171 U. S. 404, 18 Sup. Ct. 925, 43 L. Ed. 214, where it was held, that the fact that legal proceedings under the process to enforce forfeiture of land for nonentry for taxes avoided the imputation of unconstitutionality against the forfeiture clause of our Constitution. There is section 33 giving power, so far as its dry letter goes, to appoint a committee merely upon a justice finding lunacy; but there is also the Constitutional demand that no one shall be deprived of liberty or property without due process. The judiciary, in the practical application of section 33, must call for a procedure demanded by the Constitution. As we said in Evans *v.* Johnson, 39 W. Va. 303, 19 S. E. 624, 23 L. R. A. 737, 45 Am. St. Rep. 912: 'A statute will not be construed to authorize proceedings affecting a man's person or property without notice. It does not dispense with notice.' Notice is presumed to have been intended by the Legislature, unless in words denied. If such finding by a justice were conclusive upon the insane person, then notice would seem to be useless. It is effectual to commit him to a hospital for insane. But the question is, how far is such finding of a justice operative in a collateral proceeding, a distinct proceeding; namely, a proceeding for the appointment of a committee? In such collateral proceeding it is not conclusive, but only an item of evidence of the fact of insanity. 16 Am. & Eng. Ency. L. (2d Ed.) 606. It would be going far to say that the finding of a justice upon an inquisition of lunacy under section 9, ch. 58, Code 1899, which has for its sole and only purpose the confinement of a lunatic in a hospital, has the further effect, the conclusive effect, of establishing insanity for all purposes; that it can be made a basis, without further question

or contestation, of an order for the appointment of a committee to deprive the person of his property. It is only prima facie evidence of insanity—admissible, but not conclusive. The party has right to contest it. The finding of the inferior tribunal can not bar the right of the party to contest the charge of insanity and prevent the appointment of a committee. The two proceedings are distinct. Harrison *v.* Garnett, 86 Va. 763, 11 S. E. 123. Therefore he must have notice, because he has a right to meet and defeat the prima facie case made by the finding of the justice."

Criminal Law—Former Jeopardy—Conviction of Higher Offense on Second Trial.—In Trono *v.* United States, 26 Supreme Court 121, the Supreme Court of the United States held that where an accused was tried on a charge of murder and convicted of an assault by a court of the first instance of the Phillipine Islands and the case was appealed to the Supreme Court of the Islands and the judgment was reversed and the accused was convicted of murder in the second degree, the later conviction was not in violation of a legislative provision against double jeopardy.

This case is interesting in that it is the first expression of the Supreme Court of the United States upon this subject. Mr. Justice Peckham, in delivering the opinion of the court, said that the question thus presented was the same as the question whether the accused upon a new trial accorded him in the federal courts could be again tried for the greater offense set forth in the indictment or must the trial be confined to that offense of which the accused had been previously convicted, and which conviction had, upon his own motion, been set aside and reversed by the higher court.

Four of the justices, including the chief justice, dissented, and Mr. Justice McKenna filed a strong dissenting opinion in which he summarized the authorities of the different states on the question, saying: "Opposed to it (the judgment in question) is the general consensus of opinion of American text books on criminal law and the overwhelming weight of American decided cases." And in a marginal note the following summary is given of cases taking the view contrary to that held by the majority:

"**Alabama.**—Bell *v.* State, 48 Ala. 684, 17 Am. Rep. 40; Berry *v.* State, 65 Ala. 117; Sylvester *v.* State, 72 Ala. 201.

California.—People *v.* Gilmore, 4 Cal. 376, 60 Am. Dec. 620; People *v.* Apgar, 35 Cal. 389; People *v.* Gordon, 99 Cal. 227, 33 Pac. 901.

Florida.—Johnson *v.* State, 27 Fla. 245, 9 So. 208; Golding *v.* State, 31 Fla. 262, 12 So. 525.

Illinois.—Brennan *v.* People, 15 Ill. 511; Barnett *v.* People, 54 Ill. 325.

Iowa.—State *v.* Tweedy, 11 Iowa 350; State *v.* Helm, 92 Iowa 540, 61 N. W. 246.